

United States District Court

for

District of Guam

FILED

DISTRICT COURT OF GUAM

JUN - 6 2006

**MARY L.M. MORAN
CLERK OF COURT**

**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearings is Attached)

Name of Offender: **Chong Suk Han** Case Number: **CR 05-00051-001**
Name of Sentencing Judicial Officer: Honorable Ricardo S. Martinez
Date of Original Sentence: June 16, 2005
Original Offense: Possession with Intent to Distribute Methamphetamine Hydrochloride, in violation of 21 U.S.C. §§ 841(a)(1) & (b).
Original Sentence: Four month imprisonment term with credit for time served followed by a four year term of supervised release with conditions: not commit another federal, state, or local crime; not unlawfully possess a controlled substance; refrain from any unlawful use of a controlled substance; submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter; not possess a firearm, ammunition, destructive device, or any other dangerous weapon; cooperate in the collection of DNA; comply with the standard conditions of supervision; serve four months of home detention, subject to electronic monitoring; refrain from the use of alcoholic; participate in a program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs and alcohol, and make a co-payment at a rate to be determined by the U.S. Probation Office; pay a \$100 special assessment fee; and pay a \$2,000 fine.

Type of Supervision: Supervised Release

Date Supervision: June 16, 2005

PETITIONING THE COURT

- ☐ To extend the term of supervision _____ years, for a total term _____ years.
☒ To modify the conditions of supervision as follows:

1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight drug tests per month, as directed by the probation officer.

ORIGINAL

CAUSE

On September 2, 2005, the Ninth Circuit, in United States v. Stephens, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. § 3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power. To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated Ms. Han's history of drug use, and the drug detection period of her drug of choice. As methamphetamine is the offender's drug of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender. To address the implications of United States v. Stephens, Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Ms. Han's mandatory condition to set the maximum number of tests she must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

Ms. Han has tested consistently negative for drug and alcohol use since the commencement of supervision. Her DNA requirement was fulfilled on September 6, 2005 and she completed her home detention requirement on January 13, 2006. Ms. Han is currently in her last phase of drug treatment and testing and is set to complete in July 2006. In addition, she paid her \$100 special assessment fee on June 10, 2005, and fulfilled her fine obligation on April 4, 2006.

Based on the information above, this Officer respectfully requests that the Court modify the conditions of supervised release, pursuant to 18 U.S.C. § 3583(e)(2) as outlined above. Attached is Probation Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision, with Ms. Han's consent to the modification.


Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer
Supervision Unit Leader

Date: 5/31/06

Respectfully submitted,


by: JOHN W. SAN NICOLAS II

U.S. Probation Officer

Date: 5.31.2006

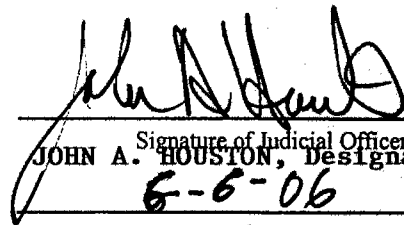
THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other

RECEIVED

JUN - 1 2006

DISTRICT COURT OF GUAM
HAGATNA, GUAM


Signature of Judicial Officer
JOHN A. HOUSTON, Designated Judge
6-6-06
Date

Date

United States District Court

District Guam

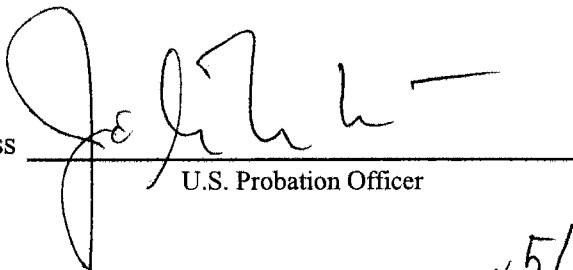
Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

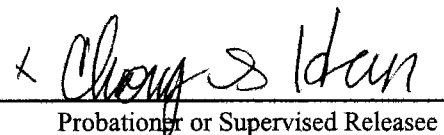
1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

Witness



U.S. Probation Officer

Signed



Probationer or Supervised Releasee

x5/24/06
Date